

Message Text

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PAGE 01 STATE 177558
ORIGIN EB-08

INFO OCT-01 ARA-14 EUR-12 EA-09 NEA-10 IO-14 ISO-00
TRSE-00 L-03 SIG-02 AID-05 CIAE-00 COME-00 FRB-01
INR-07 NSAE-00 USIA-15 XMB-04 OPIC-06 SP-02
LAB-04 SIL-01 OMB-01 NSC-05 SS-15 STR-04 CEA-01
SEC-01 SSO-00 NSCE-00 INRE-00 ITC-01 /146 R

DRAFTED BY EB/OT/STA:CBLUM:LPP

APPROVED BY EB/OT/STA:JSPIRO

TREASURY:THUME(SUBS)

L/EB:CROH

EA/J:HCOCHRANE

EUR/RPE:RLAMANTIA

-----125048 290012Z /72

O R 282253Z JUL 77

FM SECSTATE WASHDC

TO AMEMBASSY TOKYO IMMEDIATE

INFO AMEMBASSY BONN

AMEMBASSY BRUSSELS

AMEMBASSY COPENHAGEN

AMEMBASSY DUBLIN

AMEMBASSY THE HAGUE

AMEMBASSY LONDON

AMEMBASSY LUXEMBOURG

AMEMBASSY PARIS

AMEMBASSY ROME

USMISSION GENEVA

AMEMBASSY VIENNA

AMEMBASSY OTTAWA

AMEMBASSY MADRID

AMEMBASSY BRASILIA

AMEMBASSY MEXICO

AMEMBASSY NEW DELHI

AMEMBASSY SEOUL

AMEMBASSY TAIPEI

USMISSION USUN NEW YORK

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PAGE 02 STATE 177558

AMEMBASSY BERN

AMEMBASSY OSLO

AMEMBASSY HELSINKI

AMEMBASSY STOCKHOLM

AMEMBASSY LISBON

AMEMBASSY CANBERRA

AMEMBASSY WELLINGTON

UNCLAS STATE 177558

USMTN ALSO FOR USMISSION, USOECD ALSO FOR EMBASSY,

E.O. 11652:N/A

TAGS:ETRD, JA

SUBJECT: CUSTOMS APPEALS COURT REVERSES ZENITH DECISION

USEEC ALSO FOR EMBASSY

REF: STATE 20455 (NOTAL)

1. ON JULY 28 COURT OF CUSTOMS AND PATENT APPEALS (CCPA) BY A 3-2 VOTE REVERSED THE CUSTOMS COURT DECISION IN THE ZENITH CASE. THE LOWER COURT HAD HELD THAT THE REBATE OF THE JAPANESE COMMODITY TAX ON EXPORTED GOODS WAS A COUNTERAVAILABLE "BOUNTY OR GRANT" UNDER U.S. LAW. THE CCPA RULED THAT "UNTIL LAWFULLY CHANGED, THE ADMINISTRATIVE PRACTICE OF THE TREASURY DEPARTMENT, IN UNIFORMLY CONSIDERING A NONEXCESSIVE REMISSION OF AN EXCISE TAX AS FAILING TO CONSTITUTE A BOUNTY OR GRANT, MUST STAND AS A LAWFULLY PERMISSIBLE INTERPRETATION OF (SECTION 303 OF THE TARIFF ACT OF 1930 AND THAT) ... THAT INTERPRETATION IS UNCLASSIFIED

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PAGE 03 STATE 177558

FULLY APPLICABLE TO THE JAPANESE COMMODITY TAX LAW."

2. ZENITH HAS 90 DAYS TO PETITION THE SUPREME COURT TO HEAR THE CASE ON APPEAL. UNTIL THAT LEGAL ALTERNATIVE IS EXHAUSTED, THE SUSPENSION OF LIQUIDATION OF CUSTOMS DUTIES ON THE AFFECTED ELECTRONIC GOODS IMPORTED FROM JAPAN WILL

REMAIN IN EFFECT.

3. UNTIL USG LAWYERS CAN ANALYZE THE DECISION, IT IS UNCLEAR THE PRECISE EFFECT THE CCPA RULING IS LIKELY TO HAVE ON THE U.S. STEEL CASE NOW ON THE CUSTOMS COURT DOCKET. (U.S. STEEL HAS ALLEGED THAT THE REBATE ON EXPORTED GOODS OF THE VALUE-ADDED TAX BY THE EC AND OTHER COUNTRIES IS A "BOUNTY OR GRANT.") VANCE

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Message Attributes

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Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
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Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Executive Order: N/A
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TAGS: ETRD, JA, ZENITH
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